

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

COREY LAMONT YATES,)
)
Petitioner,)
) CAUSE NO. 1:11-CV-277 RM
vs.)
)
SUPERINTENDENT,)
)
Respondent.)

OPINION AND ORDER

Corey Lamont Yates, a *pro se* prisoner, filed a habeas corpus petition pursuant to 28 U.S.C. § 2254 challenging his 2004 murder conviction in Allen County. (DE 22.) In Yates v. Superintendent, 1:07-CV-985 (S.D. Ind. filed July 30, 2007), Mr. Yates challenged this same 2004 murder conviction. His petition was denied in November 2007 and he didn't appeal the judgment. Id.

This court has no jurisdiction to hear an unauthorized successive habeas corpus petition. Burton v. Stewart, 549 U.S. 147, 157 (2007). Mr. Yates already filed a federal habeas petition challenging his 2004 murder conviction. Regardless of whether the claims he is attempting to present are new or the same as those previously presented, the petition must be dismissed. "A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed." 28 U.S.C. § 2244(b)(1). New claims may be presented under certain circumstances:

Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

28 U.S.C. § 2244(b)(3). Mr. Yates hasn't obtained an order from the U.S. Court of Appeals for the Seventh Circuit permitting him to proceed with any new claims. "A district court *must* dismiss a second or successive petition, without awaiting any response from the [state], unless the court of appeals has given approval for its filing." Nunez v. United States, 96 F.3d 990, 991 (7th Cir. 1996) (emphasis in original). The petition must be dismissed.

For the reasons set forth above, the petition (DE 22) is DISMISSED for lack of jurisdiction. The petitioner's pending motions (DE 4, 5, 24, 26) are DENIED as moot.

SO ORDERED.

ENTERED: November 21, 2011.

/s/ Robert L. Miller, Jr.
Judge
United States District Court

cc: C. Yates